APPENDIX A

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 20th day of March, 1968, the following order was made and entered, to-wit:

12693

EDWARD W. HOLSTINE, Plaintiff Below, *Appellee*

vs.

CHEMICAL TANK LINES, INC., a corporation, and GARLAND BRUMFIELD, Defendants Below, CHEMICAL TANK LINES, INC., a corporation, *Appellant*

Upon an appeal from and supersedeas to a judgment of the Circuit Court of Kanawha County, rendered on the 10th day of May, 1967.

On a former day, to-wit, March 19, 1968, came counsel for the appellee and appellant in this proceeding and submitted and argued the several written motions upon jurisdictional matters with briefs in support thereof, pursuant to a former order of this Court, entered herein on February 6, 1968, and the Court takes time to consider of its judgment on these several motions.

This day, upon consideration of such motions, the Court is of the opinion that the motion of appellee, plaintiff below, heretofore filed on November 28, 1967, to dismiss this appeal and supersedeas on the ground that the appellant failed to execute the appeal and supersedeas bond as fixed by this Court within the two months period as required by the statute and Rules of Practice in this Court should be sustained, and that the motion of appellant, defendant below, filed on December 21, 1967, to dismiss such motion of appellee for reasons stated therein should be overruled; that by reason thereof, the Court is further of the opinion

that it becomes unnecessary to consider the further motion of appellee, plaintiff below, filed herein on December 5, 1967, and the two other motions of appellant, defendant below, filed herein on December 21, 1967, or any other motions of counsel heretofore filed.

It is therefore considered and ordered that the appeal and supersedeas heretofore granted in this action, be, and the same is hereby dismissed from the docket of this Court for failure to timely file appeal and supersedeas bond as provided in Code, 58-5-14, as amended, and Code, 58-5-16, and in accordance with the principles stated in case of Scott vs. Coal & Coke Railway Company, 70 W. Va. 777; 74 S.E. 992. See also State vs. Legg, 151 W. Va. 401; 151 S.E. (2nd) 215; all of which is ordered to be certified to the Circuit Court and Court of Common Pleas of Kanawha County.

A True Copy

Attest: KENNETH E. HINES
Clerk Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 25th day of March, 1968, the following order was made and entered, to-wit:

EDWARD W. HOLSTINE, Plaintiff Below, *Appellee*

vs.

CHEMICAL TANK LINES, INC., a corporation, and GARLAND BRUMFIELD, Defendants Below, CHEMICAL TANK LINES, INC., a corporation, *Appellant*

Upon an appeal from and supersedeas to a judgment of the Circuit Court of Kanawha County, rendered on the 10th day of May, 1967.

On this day came J. Campbell Palmer, III, counsel for the appellant in this proceeding, and presented to the Court motion in writing with brief in support thereof, to reconsider the order entered herein on the 20th day of March, 1968 dismissing this appeal for failure to fine [sic] appeal and supersedeas bond within the time permitted by statute, or in the alternative for a stay of sixty days pending an appeal to the United States Supreme Court.

Upon consideration whereof the Court is of opinion to and doth refuse the motion to reconsider its aforesaid order and to permit a rehearing on the motions involved; and the Court is further of opinion to and doth grant the motion to stay the execution on the judgment as provided by Code, 58-5-31.

It is therefore considered and ordered that the execution on the judgment entered on March 20, 1968, be suspended for a period of ninety days from the end of this term, in order to permit the aforesaid appellant to appeal to the Supreme Court of the United States, but this order is not to take effect until the said appellant, or some person for it, shall have given before the Clerk of this Court bond with good personal security in the penalty of FIVE HUNDRED THOUSAND Dollars, conditioned according to law: all of which is ordered to be certified to the Circuit Court of Kanawha County and to the Common Pleas Court of Kanawha County. Judge Calhoun absent.

A True Copy

Attest:
Clerk Supreme Court of Appeals